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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 28 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of: )  
 )  
Implementation of Section 17 of )  
the Cable Television Consumer )  
Protection and Competition Act of 1992 ) ET Docket No. 93-7  
 )  
Compatibility Between Cable Systems )  
and Consumer Electronics Equipment )  
 )

**OPPOSITION TO COMMENTS AND INFORMAL  
REQUEST FOR COMMISSION ACTION**

Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys, hereby opposes the Comments and Informal Request for Commission Action filed by the City of Akron, Ohio and surrounding municipalities ("Akron Area Cities") on June 23, 1994, in this proceeding. Time Warner became aware of the Akron submission by virtue of its participation in a separate proceeding pending before the Cable Services Bureau involving a Petition for Declaratory Ruling concerning scrambling and converter box legislation under consideration by the New Hampshire House of Representatives wherein the same set of pleadings were submitted by the Akron Area Cities.<sup>1</sup> Time Warner has filed a set of Reply Comments addressing the issues raised by the Akron Area Cities in that proceeding. As pointed out in Time Warner's Reply Comments, the

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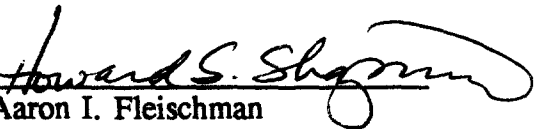
<sup>1</sup>Akron Area Cities' Comments filed June 23, 1994 in Petition for Declaratory Ruling Concerning Preemption of State Restrictions on Cable Operators' Use of Converter Boxes, Scrambling, Encryption, or Digital Technology (Public Notice 43173, May 24, 1994).

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issues raised by the Akron Area Cities are not presently before the Commission in this proceeding. However, to the extent that the Commission deems the Comments filed by the Akron Area Cities to be relevant in this proceeding, Time Warner requests that the Commission also consider Time Warner's Reply Comments and make them a part of the record in this proceeding. A copy of Time Warner's Reply Comments is attached hereto as Exhibit 1.

Respectfully submitted,

TIME WARNER ENTERTAINMENT  
COMPANY, L.P.

By:   
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Date: July 28, 1994

Its Attorneys

**EXHIBIT 1**

**Reply Comments of Time Warner Entertainment  
Company, L.P., July 8, 1994**

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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In the Matter of:

New Hampshire House of Representatives  
Committee on Science, Technology & Energy

Petition for Declaratory Ruling Concerning  
Preemption of State Restrictions on Cable  
Operators Use of Converter Boxes, Scrambling  
Encryption, or Digital Technology

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JUL - 8 1994

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**REPLY COMMENTS OF  
TIME WARNER ENTERTAINMENT COMPANY, L.P.**

Date: July 8, 1994

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- Exhibit 1 Declaration of Stephen Fry**
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## SUMMARY

The Akron Area Cities have urged the Commission to issue a broad ruling conferring unilateral authority on all local cable franchising authorities to prohibit scrambling on all regulated service tiers regardless of local law and provisions contained in local franchises. This request must be denied.

The thrust of the comments submitted by the Akron Area Cities centers around a state-of-the-art fiber optic system upgrade and the utilization of a new addressable home terminal, the Pioneer 9000, that Time Warner is currently deploying in the City of Akron and surrounding areas. The Akron Area Cities claim that subscribers are not benefitting from the use of the home terminal, that the home terminal has been deployed for revenue generating purposes and that the scrambling of Time Warner's cable programming services is having serious detrimental effects on subscribers. These exaggerated and unsubstantiated claims provide an excellent example of why continued federal preemption in this area is necessary.

The Pioneer 9000 Terminal makes possible a degree of subscriber choice and control over programming purchases unmatched by other technologies such as traps, interdiction, or broadband descrambling. Fully 86 percent of Time Warner's subscribers who have had the opportunity have purchased one or more of the *a la carte* services made available by the system upgrade. This striking figure illustrates that Time Warner is providing customers with exactly the type of choice and control that Congress envisioned. The widespread public acceptance of Time Warner's new programming and the Pioneer 9000 Terminal contrasts sharply with the suggestions made by the Akron Area Cities that subscribers are not benefitting from the upgrade.

The Pioneer 9000 Terminal represents state-of-the-art technology which allows subscribers to customize and maximize their viewing experiences. Furthermore, the innovative features of the terminal allow Time Warner to present its services in an easy to use and consumer friendly format. The terminal supports addressability and interactive services, provides an on-screen programming guide, features a built-in program timer for use with VCRs,

and has a number of other features desired by subscribers. Most importantly, the Pioneer 9000 Terminal accommodates nearly all of the compatibility goals established by Congress in the 1992 Cable Act.

The suggestion made by the Akron Area Cities that deployment of the Pioneer 9000 Terminal was motivated by a desire to earn the 11.25 rate of return on customer premises equipment allowed under the FCC's rate regulations must be rejected. Time Warner's business is the delivery of programming to its customers, not the leasing of equipment. Time Warner elected to use the Pioneer 9000 Terminal because it allows the company to provide the most attractive array of programming possible; it provides the most flexibility in allowing customers to customize their service purchases; it addresses most of the compatibility goals established by Congress in the 1992 Cable Act; and it provides a user friendly interface for interactive and other advanced services. That many of the services which are offered through the home terminal are unregulated does not detract from the fact that the system upgrade has greatly expanded consumer choice, a fact reflected by the overwhelmingly positive acceptance of these new services.

As a final matter, the Commission must recognize that the technological innovations accruing from Time Warner's upgrade allow Time Warner to compete with other providers of information and entertainment services including direct broadcast satellite, telephone companies, computer companies and video rentals in a rapidly changing and increasingly competitive marketplace. Local regulators must not be allowed to stifle creativity, innovation and experimentation in delivering services to customers or impair the ability of cable operators to effectively compete in the marketplace by unilaterally restricting cable systems to the use of outmoded technology under the guise of consumer protection. The Commission's long-standing policy of preempting all such local requirement remains sound.

BEFORE THE  
**Federal Communications Commission**  
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In the Matter of: )

New Hampshire House of Representatives )  
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Petition for Declaratory Ruling Concerning )  
Preemption of State Restrictions on Cable )  
Operators Use of Converter Boxes, Scrambling )  
Encryption, or Digital Technology )

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**REPLY COMMENTS OF  
TIME WARNER ENTERTAINMENT COMPANY, L.P.**

Time Warner Entertainment Company, L.P. ("Time Warner") respectfully replies to the comments filed on June 23, 1994 by the City of Akron, Ohio and surrounding municipalities ("Akron Area Cities") in the above-captioned proceeding. In its comments, the Akron Area Cities support a ruling by the Commission that converter box/scrambling legislation under consideration by the New Hampshire House is not preempted by federal law. In addition, the Akron Area Cities urge the Commission to go further and issue a broad ruling conferring unilateral authority on all local cable franchising authorities to prohibit scrambling on all regulated service tiers, irrespective of whether such authority has first been conferred by individual states and without the need for provisions prohibiting scrambling to be included as part of the grant, renewal or renegotiation of any franchise agreement. Attached to the comments filed by the Akron Area Cities is an additional set of Comments and Informal Request



for Commission Action filed in ET Docket No. 93-7.<sup>1</sup> In its Informal Request for Commission Action, the Akron Area Cities ask the Commission to immediately prohibit channel scrambling on all regulated service tiers in the Akron area and all other affected cable systems. Although the Akron Area Cities' Informal Request for Commission Action requests relief which is outside the scope of this proceeding, Time Warner takes this opportunity to respond and urges the Commission to deny such request.

**I. Time Warner's Cable System Upgrade Provides Numerous Benefits to Subscribers.**

The thrust of the comments submitted by the Akron Area Cities centers around a state-of-the-art fiber optic system upgrade and a new converter box, the Pioneer 9000 Terminal, that Time Warner is currently deploying in the City of Akron and surrounding areas. The Akron Area Cities are upset that as a result of the system upgrade, the cable programming service tier is now being scrambled and claim that subscribers are not benefiting from use of the Pioneer 9000 Terminal, which descrambles services above the basic tier.<sup>2</sup> The Akron Area Cities argue that deployment of the Pioneer 9000 Terminal is not in the best interests of the consumers and has been used for revenue-generating purposes.<sup>3</sup> In addition, the Akron Area Cities claim that scrambling of Time Warner's cable programming service is having "serious detrimental effects"

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<sup>1</sup>The Akron Area Cities' Informal Request for Commission Action is untimely. To the extent it seeks reconsideration of issues raised in the Commission's First Report and Order in ET Docket No. 93-7 (released May 4, 1994), the Akron Area Cities' Informal Request for Commission Action was filed at least one week after the date that Petitions for Reconsideration of the Commission's First Report and Order were due. Furthermore, the issues raised in the Akron Area Cities' Informal Request for Commission Action are not ripe. The Commission stated in its First Report and Order that it would consider proposals to prohibit scrambling on any regulated tier not scrambled prior to enactment of the 1992 Cable Act in a future Further Notice of Proposed Rule Making which has not yet been released. Id. at ¶ 58.

<sup>2</sup>Informal Request for Commission Action, at p. 8.

<sup>3</sup>Informal Request for Commission Action, at p. 5.

on subscribers.<sup>4</sup> As will be demonstrated herein, these claims by the Akron Area Cities are entirely unsubstantiated and reflect the views of a politically active and outspoken minority. What is happening in Akron provides an excellent example of why continued federal preemption in this area is necessary.

Time Warner's system upgrade has provided numerous benefits to subscribers, highlighted by the deployment of over 300 miles of fiber optic cable,<sup>5</sup> the addition of twelve new channels of programming which are being made available to subscribers on an *a la carte* basis,<sup>6</sup> the addition of four premium channels<sup>7</sup> and the addition of three new pay-per-view channels. Commenced in January of 1994, the Akron area upgrade has resulted in the expansion of programming that Time Warner has been able to offer to its subscribers. Prior to the upgrade, Time Warner's system offered 40 total channels of programming, including 2 channels of pay-per-view programming. As a result of the upgrade, Time Warner's system provides a total of 59 channels of programming, including 5 channels of pay-per-view programming.<sup>8</sup>

Reaction to the new *a la carte* programming which the Pioneer 9000 Terminal makes possible has been overwhelmingly positive. Fully 86 percent of Time Warner subscribers who have the *a la carte* programming available to them have opted to order the expanded programming either as individual channels or as part of a package. This striking figure illustrates that Time Warner is providing customers with exactly the type of choice and control

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<sup>4</sup>Id. at p. i.

<sup>5</sup>See Exhibit 1 attached hereto at ¶ 7.

<sup>6</sup>These twelve channels include: WGN, ESPN2, Comedy, The Cartoon Channel, E!, Country Music Television, The Learning Channel, Bravo, Court TV, C-SPAN II, VISN, and local programming.

<sup>7</sup>These four include HBO 2, HBO 3, Showtime 3 and FLIX.

<sup>8</sup>See Exhibit 1 attached hereto at ¶ 2.

they insist on as sophisticated consumers and that Congress envisioned. The high percentage also establishes that the overwhelming majority of subscribers have directly benefitted from the use of the Pioneer 9000 Terminal. This widespread public acceptance of Time Warner's new programming and Pioneer 9000 Terminal contrasts sharply with the Akron Area Cities' claims of "strong subscriber outcry" against scrambling and the "associated implementation of unwanted converters."<sup>9</sup> The fact that 86 percent of subscribers opt for Time Warner's expanded service indicates that there is strong subscriber demand for the new programming.

Customer preference in an increasingly competitive information and entertainment industry requires that Time Warner offer subscribers expanded programming choices individually tailored to their specific needs. Of paramount interest to cable subscribers is the ability to customize the precise mix of new channels, without the need to buy unwanted channels as may happen with the purchase of channel packages. With the improvements resulting from the system upgrade and use of the new home terminal, Time Warner is able to offer subscribers a myriad of individually tailored channel combinations at affordable prices consistent with the need of Time Warner to combat the theft of cable service. This degree of choice simply is not possible with other technologies such as traps, interdiction, or broadband descrambling. The service Time Warner can now provide to customers through the Pioneer 9000 Terminal advances the Congressional goals of permitting subscribers to choose "only those program services they wish to see" and not have to pay "for programs they do not desire."<sup>10</sup>

It is true that subscribers who choose to receive only basic and cable programming service tiers after the system upgrade must use the Pioneer 9000 Terminal in order to receive the cable programming tier. However, this represents only a handful of subscribers. When the

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<sup>9</sup>Informal Request for Commission Action, at p. 4.

<sup>10</sup>S. Rep. No. 92, 102 Cong., 1st Sess. 77 (1991).

five to six percent of subscribers who take only basic service and do not need a converter are added to the 86 percent of subscribers who choose to purchase the new *a la carte* programming and who would thus require a converter/descrambler in any event, this leaves only about ten percent of all subscribers who now require a converter/descrambler to receive only the same services they received before the upgrade without a converter. It is important to step back for a moment and note that technological innovations, even minor ones, sometimes experience resistance. In this case, 86 percent of subscribers from the onset have enthusiastically opted for the newly added services, validating Time Warner's efforts to offer the kind of programming subscribers desire.

The Akron Area Cities' undocumented claims of "significant" subscriber dissatisfaction resulting from the use of the Pioneer 9000 Terminal contrasts starkly with the 86 percent of subscribers who have voiced their support for the new programming offered by Time Warner. The Akron Area Cities mention (but do not cite or provide) letters, editorials, feature articles, news reports, public meetings, and phone calls expressing dissatisfaction with Time Warner's upgrade. While Time Warner does not deny that some of that has taken place, as one would expect in any upgrade of a magnitude comparable to the Akron upgrade, this does not tell the whole story. For example, the Akron Area Cities entirely ignore the positive press coverage of the system upgrade and expanded service that has occurred as indicated by the representative sample of articles attached hereto as an Exhibit to this Reply.<sup>11</sup>

The Akron Area Cities state that Time Warner's upgrade has provided a minimal increase in the provision of regulated services while simultaneously resulting in a "significant" increase in leased equipment costs.<sup>12</sup> This narrow statement ignores the fact that the most fundamental

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<sup>11</sup>See Exhibit 2 attached hereto.

<sup>12</sup>Informal Request for Commission Action, at p. 4.

feature of the upgrade has been the provision of twelve new a la carte channels, four new premium channels and three new pay-per-view channels. It is at once both perplexing and disappointing that the Akron Area Cities do not recognize this desirable and dramatic increase in overall programming options for area subscribers merely because these are unregulated services, especially in light of the fact that an overwhelming number of subscribers have chosen to purchase these new services. In addition, the higher cost of leasing the state-of-the-art Pioneer 9000 Terminal at \$3.45 per month is not significantly more than the \$2.99 monthly fee for those subscribers who used the older addressable home terminal Time Warner previously offered with volume control before the system upgrade. Most of the difference in price reflects the fact that the Pioneer 9000 Terminals are brand new while Time Warner's previous converter/descramblers were anywhere from three to nine years old; the lower price reflecting the depreciated value of the older terminals.<sup>13</sup> In sum, the Akron Area Cities magnify minor negative effects while ignoring the positive, fundamental, and significant changes that predominate and best characterize Time Warner's upgrade.

**II. The Pioneer 9000 Terminal Maximizes Consumer Choice While Meeting Nearly All of the Compatibility Goals Established by Congress.**

Warner Cable is constantly examining ways to make its offerings more attractive to subscribers. One of the ways to accomplish this is to make its services easy to use and access. The innovative features of the Pioneer 9000 Terminal allow Time Warner to present its services in an easy-to-use and consumer-friendly format. This terminal represents state-of-the-art technology and allows subscribers to customize and maximize their viewing experiences. The benefits of these features and innovations are desired by cable subscribers and provide a user

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<sup>13</sup>See Exhibit 1 attached hereto at ¶ 6.

friendly interface that makes technology more accessible to the public. The Pioneer 9000

Terminal provides subscribers with the following state-of-the-art features:

- **Addressability and Interactive Services.** Customers may order pay-per-view programming such as special sporting events and concerts at the push of a button. Subscribers do not have to make a separate phone call to order these services. The addressability feature allows subscribers to add, delete and change their level of service with virtual immediacy and without the need to incur costly service calls. Individual subscribers as well as schools and businesses may utilize other interactive services for educational and training purposes.
- **On-screen Programming Guide.** A popular feature, the programming guide is an on-screen menu which allows subscribers to view upcoming programs for a particular category of programming chosen by the subscriber, such as children's shows or movies. Once a category is chosen, the on-screen guide lists programs in that subject area which will be presented over the next few hours. Time Warner does not impose any charge for its programming guide. It should be noted that other forms of signal security such as traps, interdiction, and broadband scrambling do not support the use of the on-screen guide.
- **Channel Lock.** A feature of the Pioneer 9000 Terminal that has been wholeheartedly accepted by parents is the channel lockout. Parents may lock out individual channels or the entire Pay-Per-View programming through this feature. Moreover, the Pioneer 9000 Terminal allows parents, by entering a password, to unlock any protected channel.
- **Favorite and Last Channel Recall.** At the push of a button, subscribers may call up programmed channels or the channel that was last watched.
- **Program Timer.** This feature allows subscribers to tape programs at their convenience. Subscribers may record consecutively on two different channels, whether scrambled or unscrambled, thus meeting one of the compatibility goals established by Congress in Section 624A of the 1992 Cable Act. In addition, subscribers may order Pay-Per-View programs in advance.
- **The Pioneer 9000 Terminal is a compatible converter and will work with most universal remote controls, including the popular VCR Plus, thereby furthering another of Congress' goals embodied in Section 624A of the 1992 Cable Act.**

- The Pioneer 9000 Terminal allows a viewer to watch an unscrambled channel while taping a scrambled channel and vice-versa. Indeed, the only compatibility goal which the Pioneer 9000 Terminal does not permit is the simultaneous taping and viewing of multiple scrambled signals without the need for a second converter, an issue that will be resolved in 1995 when the Commission's rules will require terminals with built-in multiple tuners to be made available. In this regard, it should be noted that studies of VCR use undertaken by A.C. Nielsen indicate that the average VCR home records approximately 1.5 hours per week of programming. Fifty-five to sixty percent of all recording is undertaken while the TV set is turned off, while another twenty-five to thirty percent of recording is undertaken with the television set tuned to the same channel being recorded. In neither of these cases is compatibility impaired by the Pioneer 9000 Terminal. In the fifteen to twenty percent of instances where the VCR is recording a different channel than is being watched, the fact that sixty-five to seventy percent of all recordings are of shows aired by NBC, ABC or CBS affiliates, which are not scrambled in any event, indicates that in only a small fraction of instances (approximately five to seven percent) would the Pioneer 9000 Terminal present any kind of impediment to the full functioning of consumer electronics equipment.<sup>14</sup>

In summary, the Pioneer 9000 Terminal allows Time Warner to offer the programming and service features prized by subscribers in a manner which addresses nearly all of the compatibility goals established by Congress. The overwhelming percentage of subscribers, 86 percent, who took advantage of Time Warner's new expanded *a la carte* programming and Pioneer 9000 Terminal illustrates that Time Warner is responding to customer needs and preferences. Notwithstanding the Akron Area Cities' unsubstantiated claims to the contrary, consumers have recognized the many benefits provided by Time Warner's system upgrade and use of the Pioneer 9000 Terminal as evidenced by their high subscription rates to the newly offered services.

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<sup>14</sup>TV Dimensions '94, Media Dynamics, Inc., at p. 121.

### **III. Lease of the Pioneer 9000 Terminal Does Not "Drive" Revenue for Time Warner.**

The Akron Area Cities "believe" that the sole purpose of the requirement to lease the Pioneer 9000 Terminal is to "drive" revenues for Time Warner.<sup>15</sup> This suggestion is wholly inaccurate. The Akron Cities' Comments simply misunderstand the fact that while Pioneer may be in the business of selling converters, Time Warner certainly is not. Time Warner's business is the delivery of programming to its customers. The Akron Area Cities correctly note that the Commission's rate regulations allow Time Warner an 11.25 percent rate of return on its home terminal equipment but erroneously suggest that Time Warner has deployed the new customer premises equipment solely as a way to collect this additional revenue.<sup>16</sup> Parties knowledgeable in the area of finance must acknowledge that the 11.25 percent return permitted by the Commission's regulations is a modest rate of return on invested capital. By arriving at a rate of return figure of 11.25 percent for rate-regulated equipment, the Commission recognizes that some rate of return is necessary to attract the capital to invest in new equipment. Time Warner elected to use the Pioneer 9000 Terminal because: 1) it allows the company to provide the most attractive array of programming possible; 2) it provides the most flexibility in allowing subscribers to customize their service purchases; 3) it addresses most of the compatibility goals established by Congress in the 1992 Cable Act; and 4) it provides a user friendly interface for interactive and other advanced services. Given that the FCC permits a modest return on deployment of new equipment, Akron Area Cities can hardly expect Time Warner to forego revenue to which it is legally entitled.

The Akron Area Cities also contend that the Pioneer 9000 Terminal is an "effective" and "creative" way to facilitate the enhancement of unregulated revenues and point to the fact that

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<sup>15</sup>Informal Request for Commission Action, at p. 7.

<sup>16</sup>Informal Request for Commission Action, at p. 7.



most of the new services offered as a result of the upgrade are *a la carte* and premium services which are not regulated.<sup>17</sup> Time Warner is hard pressed to understand why the Akron Area Cities views this as an undesirable development. In fact, growth in this area is precisely what the Commission has predicted and encouraged and the Congress intended in the 1992 Cable Act. Following the Commission's recent announcement of an additional seven percent rate reduction for regulated cable services, FCC Chairman Reed Hundt explained that the rate regulations were crafted to provide incentives for cable operators to obtain additional revenue by investing in their systems and to provide new, unregulated services.<sup>18</sup> Time Warner's system upgrade has been accomplished in precisely the manner envisioned by Chairman Hundt. More than 300 miles of fiber optic cable has been deployed systemwide, which will enable the system to accommodate the needs of both residential and business users. Premium and *a la carte* offerings have been expanded, providing consumers with a myriad of choices from which to customize their program purchases. Acceptance by subscribers has been overwhelming positive. Cable operators must not be prevented from successfully adapting to the rapid pace of regulatory and technological changes.

The position taken by the City of Akron in its Informal Request for Commission Action is even more perplexing given the provisions of the City's franchise that require the cable operator to expand system capacity to at least 62 channels and to make available interactive services, pay-per-view programming, narrowcasting, and data transmission. With its system

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<sup>17</sup>Informal Request for Commission Action, at p. 8.

<sup>18</sup>See "US FCC Chairman Said Cable TV Regs Hold Incentives," Reuters, Limited, Financial Report, May 17, 1994; Chairman Reed E. Hundt, "Speech Before 43rd Annual Convention and Exposition of the National Cable Television Association," New Orleans, Louisiana, May 24, 1994. See also Second Order on Reconsideration in MM Docket No. 92-266, 74 RR 2d 1077 (1994), at ¶¶ 54-66.

upgrade and deployment of the state-of-the-art Pioneer 9000 Terminal, Time Warner is meeting these very requirements.

**IV. Time Warner's System Upgrade Allows the Company to Compete in an Increasingly Competitive and Innovative Home Entertainment and Information Services Marketplace.**

Not only does use of the Pioneer 9000 Terminal allow Time Warner to serve the expressed needs of its subscribers, its advanced features and technology allows Time Warner to compete in a changing telecommunications environment. The advent of Direct Broadcast Satellite ("DBS") systems represent potentially formidable competitors to cable operators such as Time Warner. If Time Warner is to remain competitive in an evolving telecommunications environment in which its competitors have utilized the very latest that technology has to offer, Time Warner and other cable operators must also be allowed to upgrade and improve their technical capabilities. It must be noted that non-cable delivery systems such as DBS and wireless cable, which are not regulated by local franchising authorities, require the use of an interface box similar to the Pioneer 9000 Terminal.

Telephone and computer companies are also experimenting with ways to transmit video signals into subscriber homes using both telephone lines and coaxial cable. In either case, some sort of interface terminal will be required. It would be grossly unfair to allow these competitors of cable to use sophisticated interface devices while allowing local franchising authorities to prohibit cable operators from employing comparable technology in offering their services.<sup>19</sup>

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<sup>19</sup>Presently, there are dozens of video dialtone applications pending before the Commission. Several days ago, the FCC announced that it had granted the first application to provide commercial video dialtone service filed by New Jersey Bell Telephone Company which authorized that company to offer video dialtone service in Dover Township, New Jersey. In the news release announcing the grant, the Commission noted that the video dialtone service will require the use of set-top converter boxes. FCC News Release, "First Commercial Offering of Video Dialtone Authorized For Dover Township, NJ," Report No. CC-580, FCC Mimeo 43806 (July 6, 1994) at p. 2.

Features on the Pioneer 9000 Terminal, such as the interactive ordering of pay-per-view programming, also allow Time Warner to compete with the video rental industry. As of the spring of 1993, approximately 80 percent of homes in the United States owning TVs had videocassette recorders, and this number continues to grow.<sup>20</sup> The Pioneer 9000 Terminal gives home viewers the option of ordering programming at home without the need to travel to video outlets.

Without the use of scrambling and addressability, Time Warner would not, as a practical matter, be able to offer *a la carte* services, pay-per-view, near video on demand or transactional services. Even as to those services which could be offered, Time Warner would be placed at an extreme competitive disadvantage because of the time and cost that would be required to effect service changes required by the subscribers. Despite the Akron Area Cities' complaint about the cost of leasing the Pioneer 9000 Terminal, the fact is that this equipment allows for services to be added, deleted or disconnected entirely on an immediate basis and without the time lag and cost to subscribers of sending out a service technician to make the requested change. In an emerging competitive marketplace where cable's competitors are free from intrusive and counterproductive local regulation, cable operators must not be hampered in responding to marketplace developments. The Commission must continue to preempt all local regulation of home terminals and scrambling. In the end, the marketplace, not local politicians, will succeed in providing consumers with the services they want and the most efficient means of delivering those services.

#### V. Conclusion.

Time Warner's upgrade and deployment of the Pioneer 9000 Terminal advances the Congressional goal of increasing diversity and choice by allowing cable subscribers to choose

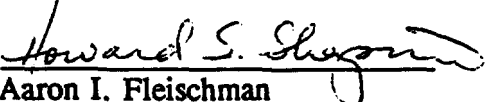
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<sup>20</sup>TV Dimensions '94, Media Dynamics, Inc., at 121.

programming combinations they desire without the need to buy unwanted channels. Overwhelming approval of the new services provided by the upgrade is indicated by the 86 percent penetration rate of the newly available *a la carte* services. Against the higher cost of the home terminal must be weighed the cost savings and convenience to the customer that addressability provides. Technological innovations accruing from Time Warner's upgrade allow Time Warner to compete with other providers of information and entertainment services including Direct Broadcast Satellite, telephone companies, computer companies, and video rentals in a rapidly changing and increasingly competitive marketplace. Local regulators must not be allowed to stifle creativity, innovation and experimentation in delivering services to customers by unilaterally mandating outmoded technology under the guise of consumer protection. The Commission's long-standing policy of preempting all such local requirements remains sound.

Respectfully submitted,

TIME WARNER ENTERTAINMENT  
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Date: July 8, 1994

Its Attorneys

## **EXHIBIT 1**

### **Declaration of Stephen Fry**

### **DECLARATION**

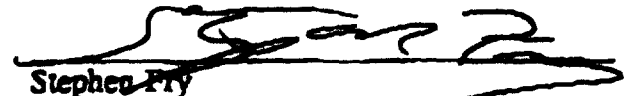
I, Stephen Fry, do hereby declare and state under penalty of perjury as follows:

1. I am President of Warner Cable Communications of Greater Akron.
2. Prior to Time Warner's fiber optic upgrade, Time Warner offered a total of 40 channels of cable programming, including two pay-per-view channels. As a result of the system upgrade, 12 new *a la carte* services, four new premium services, and three new pay-per-view services were added to the cable system. Time Warner now offers 59 channels of programming, including five pay-per-view channels.
3. Approximately five to six percent of Time Warner's customers subscribe only to basic service. The upgrade did not appreciably change this percentage.
4. Prior to the upgrade, approximately 44 percent of its customers subscribed to premium services and were already using a home terminal.
5. To date, the response of our customers to the upgrade has been overwhelmingly positive. Approximately 86 percent of the homes which have been upgraded have chosen to subscribe to one or more of the newly available *a la carte* services either individually or as part of a package.
6. The Pioneer 9000 Terminal used in Time Warner's upgrade is most comparable to the addressable converter box with volume control leased by subscribers prior to the upgrade at a rate of \$2.99 per month calculated in accordance with FCC regulations. The \$3.45 monthly rate for the Pioneer 9000 Terminal also calculated pursuant to the FCC's formula is higher because it is a new, undepreciated piece of equipment and the converters used by subscribers prior to the upgrade have been in service three to nine years.

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7. As part of the upgrade of the Akron complex, Time Warner has deployed approximately 303 miles of fiber optic cable. When the upgrade is complete, approximately 338 miles of fiber optic cable will have been deployed throughout the cable system.

8. I have read the foregoing Reply. With respect to statements made therein, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of personal knowledge, information, and belief.

  
Stephen Fry

Date: July 8, 1994

Sworn and subscribed to before  
me this 8 day of July, 1994

  
Notary Public

My Commission expires: 5/23/98

17082

## **EXHIBIT 2**

### **Newspaper Articles**





"That will mean you can order 'Gone With the Wind' through your television, have a compressed version sent to your house in eight seconds and stored in your converter box."

**STEPHEN FRY**  
president, Warner Cable  
of Akron

# Warner executive looks at cable's future

• Technology is available to give subscribers more choices by early 1994

BY STUART DROWN  
*Beacon Journal business writer*

A small group of people from local businesses and government got a glimpse into cable television's future Wednesday night.

Using equipment that is still under development, Stephen Fry, president of Warner Cable of Akron, gave a demonstration at downtown Akron's Cascade Plaza Hotel of what will be possible with high-definition television and compression technology. High definition increases the detail on the television screen; compression technology gives companies the ability to squeeze 12 channels into one on the cable.

Anticipating the advances, Warner is embarking on a \$27 million fiber optic system upgrade that by February 1994 will in-

crease the amount of viewer options to the Akron area's 97,000 Warner subscribers. Among other things, Warner's channel capacity will increase to 72 from 40. But with compression technology, viewers will have access to even more programming.

Fry used a prototype television built by General Instruments to show the group how new television and cable technology will revolutionize the video industry — bringing sharper, clearer images that enable a viewer to see the pollen on a bird's beak or the scales of a fish as well as hear compact disc-quality sound.

"We just want these people to see what we are seeing to give them a sense of what is possible," Fry said.

The demonstration only hinted at the possibilities Fry and Warner Cable envision — interactive television that will allow viewers to call up movies or information on

See CABLE, Page C11

*The Beacon Journal, Thurs. Nov. 12*

## CABLE

• 5 percent hike announced this week not connected to improvements, exec says

Continued from Page C7  
demand.

Ultimately, subscribers may be able to tap into the vast resources of Warner Cable's parent, Time-Warner Inc., to call up current or back issues of Sports Illustrated or

other Time-Warner magazines, HBO television offerings, or the Warner Brothers movie library.

With compression technology, Warner would be able to "digitalize" a movie, meaning converting the signal into one made up of ones and zeros. A converter box on the subscriber's television then reconstitutes the signal into a movie.

"That will mean you can order *Gone With the Wind* through your television, have a compressed version sent to your house in eight seconds and stored in your converter box," Fry said.

The box would then decompress the movie so that viewers could

watch it at its regular speed.

Warner Cable is paying for the investment from its own pocket. It hopes to recoup its investment by increased revenues from an added tier of programming and two additional pay-per-view channels, Fry said.

"We know there will be businesses that will be able to use this system," Fry said.

This week's announced 5 percent rate increase is not linked to the company's system improvements, Fry said. The rate increase was a result of higher costs from programming, taxes, and employee benefits.